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ABSTRACT

A Florida State Department of Education technical assistance paper on expulsion of handicapped students is presented. Contents are as follows: historical information on court decisions, issues questions and answers, brief summaries of seven court cases dealing with expulsion of handicapped students, and sample materials from three local school districts. It is noted that the school district must conduct a staff meeting to determine whether a student's misconduct bears a relationship to his/her handicapping condition, while meeting federal and state requirements. An additional requirement is that the school district must conduct an individualized education program meeting. Attention is also directed to the following topics: possible alternative placements for the student, the application of the school district's code of student conduct, and procedural safeguards available to the parents of a handicapped student whose program and placement are being reviewed. The sample materials pertain to crisis intervention, secondary schoool principal's workshop on suspension/expulsion of handicapped children, and suspension policy. Forms for notifying parents and committees are included. The following court cases are described in terms of facts, issues, and findings: "Stuart vs. Nappi (Connecticut, 1978)," "Howard S. vs. Friendswood Independent School District (Texas, 1978)," "Sherry vs. New York State Education Department (New York, 1979)," "DOE vs. Koger (Indiana, 1979)," "Mrs. A. J. vs. Special School District No. 1 (Minnesota, 1979)," "P-1 vs. Shedd (Connecticut, 1980)," and "S-1 vs. Turlington (Florida, 1981)." (SW)

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TECHNICAL ASSISTANCE PAPER

State of Florida
Department of Education
Tallahassee, Florida
Ralph D. Turlington, Commissioner
Affirmative action/equal opportunity employer

Bureau of Education for Exceptional Students
Division of Public Schools

ED234527

NO. 1	EXPULSION AND HANDICAPPED STUDENTS	Refer Questions to: Diana J. Wells (904) 488-3103
September, 1981		

Statement of Problem and Purpose

On January 26, 1981, a decision issued by the U.S. Fifth Circuit Court of Appeals dealt with procedures which must be used by local school districts who may be considering the expulsion of handicapped students. This decision followed very closely several court decisions in other states, and has given educators cause to reconsider current policies and procedures for dealing with handicapped students whose behavior is disruptive to the education of others.

This technical assistance paper has been developed to assist school districts in developing policies and procedures dealing with handicapped students, and includes the following information:

* a historical perspective of court decisions dealing with expulsion of handicapped students;
* a series of questions and answers dealing with specific issues;
* brief summaries of seven court cases dealing with expulsion of handicapped students; and
* sample materials from three local school districts.

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Historical Perspective

In Stuart vs. Nappi (Conn., 1978) a student diagnosed as learning disabled challenged the use of disciplinary proceedings which, if completed, would have resulted in her expulsion for participating in a school-wide disturbance. The trial court held that the proposed expulsion constituted a "change in educational placement," thus requiring school officials to adhere to the procedural safeguards of P.L. 94-142.

In Howard S. vs. Friendswood (Texas, 1978) a student diagnosed as learning disabled challenged the school district's "constructive expulsion" procedures which were applied following a series of disciplinary problems and a subsequent hospitalization for attempted suicide. The court held that the school district must evaluate the student, develop an IEP and provide for appropriate educational services.

In Mattie T. vs. Holladay (Miss., 1979) a class action suit against the state education agency dealt with a number of issues regarding handicapped students.

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TECHNICAL ASSISTANCE PAPERS are produced periodically by the Bureau of Education for Exceptional Students to present discussions of current topics in the education for exceptional students. The TA Papers may be used for inservice sessions, technical assistance visits, parent organization meetings or interdisciplinary discussion groups. Topics are identified by state steering committees, district personnel, individuals, or from program performance audits.

In the resulting consent decree, it was ordered that when a child's behavior represents an immediate physical danger to himself or others, or constitutes a clear emergency within the school, such that removal from school is essential, removal shall be for no more than three days and shall trigger a formal comprehensive review of the child's IEP. Serial three-day removals were prohibited.

In P-1 vs. Shedd (Conn., 1980) a consent decree was developed as the result of a class action suit. One of many issues included in the decree was a disciplinary procedure. The disciplinary procedure included students referred for evaluation as well as those who were identified as handicapped. Any student referred for evaluation or identified as handicapped who is removed from school more than six times in the school year or more than twice a week, or expelled must be referred first to the Assessment Team to evaluate the child's placement. If a student is considered an ongoing threat or danger to himself or others or a substantial disruption to the educational process, an emergency suspension may take place, but the Assessment Team must meet within five days to evaluate the child's program.

In S-1 vs. Turlington (Fla., 1981) the Court of Appeals held that the expulsion of seven EMR students was a change in placement, requiring that a group of trained and knowledgeable persons determine whether the student's misconduct bears a relationship to his handicapping condition. The court also found that although expulsion is a proper disciplinary tool, a complete cessation of educational services is unlawful. Finally, the court found that handicapped students must be allowed to exercise their rights to a due process hearing if they disagree with the proposed change in placement. This is a Florida case and state officials are under an injunction to enforce all provisions of the order.

Questions and Answers

1) Does the information in this packet apply to all exceptional students, including gifted, in Florida?

   No. The information does not refer or apply to gifted students, but to students who are handicapped under EHA (P.L. 94-142) and Section 504 of the Rehabilitation Act.

2) What procedure should the school district use to determine whether a student's misconduct bears a relationship to his handicapping condition?

   The school district must conduct a staffing to make the determination. Participants in the staffing must meet the federal and state requirements as set out below.

   The implementing regulations of EHA (P.L. 94-142) and Section 504 require that:

   "In interpreting evaluation data and in making placement decisions, each public agency shall: Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options..."

State Board of Education Rule 6A-6.331(2) requires that:

(a) A staffing committee utilizing the process of reviewing diagnostic, evaluation, educational or social data shall recommend the student's educational placement.

(b) A minimum of three (3) professional personnel, one (1) of whom shall be the district administrator of exceptional students or designee, shall meet as an eligibility and placement staffing committee. Additional personnel may be involved in the eligibility and placement recommendation by providing information or by attending staffing meetings.

3) If it is determined that a student's conduct is a manifestation of his handicap, what options do school district have?

The school district must conduct an IEP meeting to determine the adequacy of the current special program and related services. The meeting may occur in conjunction with the staffing meeting or as a separate meeting. Based upon the recommendations of the staffing committee, participants in an IEP meeting would consider program options such as those discussed in question #5.

4) If the staffing committee determines that no relationship exists between a student's handicap and his misconduct, what procedures should be followed?

Although some districts may wish to follow school board procedures for recommending expulsion, the district may not cease all educational services for a handicapped student, and the procedures outlined in question #3 must be used to evaluate the student's educational plan.

5) What alternative placements are available to school districts?

When a student's behavior is disruptive to the education of others, the school district might consider the following alternatives:

a. additional related services,
b. a change in disciplinary procedures,
c. increased time in the current special program,
d. provision of a special program in another setting including, but not limited, to special schools, homebound, hospitals and other institutions,
e. involvement with programs funded by other agencies such as HRS, Community Colleges and others.

It is important to ensure that any proposed change in the educational program meets the individual needs of the student and allows for placement in the least restrictive environment.

6) Does the school district's code of student conduct still apply to handicapped students?

Yes. However, an exception must be included to ensure that handicapped students will not be denied educational services. In applying the local code of student conduct to handicapped students, it is important to remember that certain handicapped students are less able to control their behavior than other students. One essential step in developing an individual educational plan (IEP) is to include relevant in-school and out-of-school behaviors. A behavior management plan may subsequently be developed for use by the teacher as well as the parents. Any form of discipline used should take into consideration the eventual effect upon the student's behavior. For example, a standard form of discipline which exacerbates a student's behavior would be inappropriate for use.

7) What procedural safeguards are available to the parents of a handicapped student whose program and placement are being reviewed due to disciplinary problems?

All of the procedural safeguards which are normally available to parents are also available under these circumstances including, but not limited to, informed notice, informed consent if a change in placement is recommended, the right to refuse consent, the right to participate in decisions regarding the education program, and the right to request an impartial due process hearing regarding these matters.

8) Is a suspension a change in placement, thus invoking the procedural safeguards of P.L. 94-142?

No, Florida Statutes define suspension as the temporary removal of a student from his regular school program for a period not to exceed 10 school days. Chapter 232.26, Florida Statutes gives the principal the authority to suspend a student in accordance with rules of the district school board and requires a written report within 24 hours to the parent or guardian and the superintendent.

9) Do multiple suspensions constitute a "complete cessation" of educational services?

A school district which uses multiple and continuous suspensions to effectively exclude a handicapped student from educational services places itself in a vulnerable position. A series of suspensions which collectively exceed ten days could very possibly be considered an expulsion. It is recommended that districts develop written procedures to accomplish the following:

a) The IEP should reflect behavior problems which are related to the handicapping condition and should include goals and objectives for dealing with those behaviors.

b) If the procedures described in the IEP do not result in a behavior change, an IEP review should be conducted to evaluate the student's program.

10) Is a formal evaluation required prior to a change in placement?

An evaluation would be appropriate under the following circumstances:

a) If the staffing team, members of the IEP meeting or other school personnel recommend an evaluation or re-evaluation;

b) If a 3-year re-evaluation is due in the near future;

c) If the district is considering a change in program eligibility, such as SLD to EH;

d) If the parent requests one and the district agrees.

11) If the parent disagrees with a proposed change in educational program and a due process hearing is initiated, what status does the student maintain?

Unless the parents and the school agree to another placement, the student must be allowed to continue to attend the program in which he has been placed while any administrative or judicial proceeding regarding a complaint is pending. If suspension occurs during this period, the student must be allowed to return to the same program, following the termination of the suspension period.

Court Cases Dealing with Expulsion/Suspension of Handicapped Students

The following cases are provided for your reference and guidance. However, with the exception of the S-1 vs. Turlington case, the decisions are applicable to jurisdictions other than Florida, and should not necessarily be considered as precedent. Any specific concerns or questions should be directed to the school board attorney for resolution.

Stuart vs. Nappi (Conn., 1978)

FACTS: The high school student was served in a program for students with learning disabilities and had a record of behavior difficulties and poor attendance. After the student was involved in a school-wide disturbance, she was suspended for ten days. Following her suspension, the superintendent recommended that she be expelled for the remainder of the year. The student's parents requested an impartial hearing and a review of the student's education program. In addition, the parents asked that the school system be enjoined from conducting a hearing to expel the student.

ISSUES: 1. Has the student been denied her right to an appropriate education?

2. Has the student's right to remain in her present placement until the resolution of her special education complaint been denied?

3. Will the student's right to an education in the least restrictive environment be denied by the proposed expulsion?

4. Has the student been denied the right to have all changes of placement occur in accordance with the procedures of the P.L. 94-142 regulations?

FINDINGS:

1. The plaintiff demonstrated probable success on the merit of her claim that she had not been provided with an appropriate education. The program recommended by the placement team was not provided and the high school did not respond adequately when it learned that the student was no longer participating in the special education program.

2. Expulsion during the pendancy of a special education complaint was prohibited.

3. Expulsion had the effect of restricting the availability of alternative placements and excluded the student from a placement that was appropriate for her academic and social development.

4. Expulsion procedures may not be used to change the placement of a disruptive handicapped child.

5. The responsibility for changing a handicapped child's placement is allocated to professional teams.

Howard S. vs. Friendswood Independent School District (Texas, 1978)

FACTS: The plaintiff was a high school student enrolled in an SLD program whose disciplinary problems were first noted when he entered high school. School officials failed to notify the Special Education Department of discipline problems. Soon after beginning treatment by a psychiatrist, the student attempted suicide and was hospitalized for several weeks. Upon release, the student's physician recommended and the parents subsequently placed the student in a private residential school. During the student's period of hospitalization, the school's placement committee dismissed him from the program following the usual procedures regarding students who move. The parents' request for reimbursement for the private placement was denied by school officials who claimed that the student was no longer enrolled.

ISSUES:

1. Did the school district fail to provide the student with a free appropriate education?

2. Did the school district's "dismissal" without notice or hearing amount to a "constructive expulsion," thus violating the student's right to a free appropriate public education?

FINDINGS:

1. The school district failed to provide the student with a free appropriate public education, and this failure was a contributing cause of the student's severe emotional difficulties.

2. The dismissal resulted in a constructive expulsion which occurred without notice to the parents and without a hearing of any kind, and was in clear violation of the school district's obligation under the Constitution of the U.S.

3. The school district must evaluate the student's present level of performance, develop an IEP and provide for appropriate educational services for student.

4. The school district must create a due process hearing system which complies with EHA (P.L. 94-142).

Sherry vs. New York State Education Department (New York, 1979)

FACTS: A multiply handicapped child was removed from the state school for the blind and hospitalized for treatment of self-inflicted injuries. Shortly afterwards, the school superintendent informed the parents that until the child's condition changed, or until more staff was hired, the student could not return. The local school district refused to serve the student, alleging that it had no program to meet her needs. After the parents requested an impartial hearing from the state school, the state school suspended the child indefinitely and offered the parents an informal hearing with the right to representation by counsel.

ISSUES: 1. Is a student who is enrolled in a state school for the blind entitled to an impartial due process hearing which meets the requirements of EHA?

2. Did the school's suspension violate EHA and 504?

FINDINGS: 1. The school's suspension based on a lack of supervisory staff was unlawful under EHA and 504. The education agency has an obligation to provide the related services necessary for an appropriate education.

2. The handicapped student was entitled to all of the procedural safeguards under the regulations of P.L. 94-142, including an impartial due process hearing regarding the change in placement.

DOE vs. Koger (Ind., 1979)

FACTS: Following an expulsion hearing, a mildly mentally handicapped student was expelled for the remainder of the school year.

ISSUES: Does expulsion violate the student's rights under EHA and Equal Protection Clause of 14th Amendment?

FINDINGS: 1. EHA was intended to limit a school's right to expel handicapped students.

2. Neither EHA nor its implementing regulations provide for the expulsion of handicapped students, or prohibit all expulsions of handicapped students.

3. Schools may not expel students whose handicaps cause them to be disruptive. Instead, appropriate placements must be provided.

4. A disruptive handicapped student may be suspended only if the school is unable to immediately place the student in an appropriate, more restrictive environment.

5. A disruptive handicapped student may be suspended only until a school is able to place the student in the appropriate, more restrictive environment.

6. Prior to expelling a handicapped child it must be determined, through the change of placement procedures of EHA, whether the disruptive behavior is caused by the handicap.

7. Expulsion of a handicapped student cannot occur until it has been determined that the student has been appripriately placed.

Mrs. A.J. vs. Special School District No. 1 (Minn., 1979)

FACTS: After a parent signed consent for evaluation for possible identification as handicapped, a student was suspended for fifteen days. Homework was delivered to student's home during the suspension period and readmission was to the home school.

ISSUES: Did the LEA comply with the state's suspension statutes or with federal and state statutes concerning handicapped students?

FINDINGS: 1. Minnesota statutes define suspension in terms of a five-day maximum with a fifteen-day total if consecutive suspensions are imposed. Therefore, three consecutive suspensions require a new student conference prior to each extention to determine whether the student continues to present a substantial and immediate danger to persons or property around him.

2. Minnesota statutes require the provision of an "alternative program" during any extentions after the initial five-day suspension.

3. Although provision of homework at home may not be an adequate alternative program in all cases, it was adequate in this case.

4. The student had not been identified as handicapped at the time of suspension. Therefore, school officials were under no obligation to treat her as handicapped. More formal hearing procedures, such as those required by EHA (P.L. 94-142), were not required.

P-1 vs. Shedd (Conn., 1980)

FACTS: A class action suit was brought against the SEA contending noncompliance with a number of the provisions of P.L. 94-142, including the state's procedures for suspension and expulsion of handicapped students. Two consent decrees resulted, one in 1979 and a modified version in 1980. A consent decree is a solution agreed to by both parties and may have little legal significance.

ISSUES: Under what circumstances may students who are either referred for evaluation or identified as handicapped be suspended?

FINDINGS: The following procedures apply to all children referred for evaluation from the date of referral until the date of dismissal from special education services.

1. No identified handicapped child can be removed more than six times in a school year or more than twice in one week unless so stated in the IEP.

2. No child referred for evaluation or identified as in need of special education shall be removed more than six times in a school year or more than twice a week, suspended for more than ten days or expelled during one school year without first convening the PAT (Pupil Assessment Team).

3. If a child is considered an ongoing threat or danger to self or others, or presents a substantial disruption of the educational process, an emergency suspension may take place. However the PAT will meet within 5 school days to evaluate the child's program.

4. Any child who has not been referred or identified, but who has been suspended for more than 25 days in a school year, or is recommended for expulsion, will be referred to a school based team for possible referral for evaluation.

S-1 vs. Turlington (Fla., 1981)

FACTS: Seven EMR students were expelled from the school system for the maximum time permitted by state law. Two additional students were not expelled, but requested due process hearings regarding their educational programs, along with the one of the other seven students. The school district denied all requests for due process hearings.

ISSUES: 1. Is expulsion a change in educational placement thereby invoking the procedural protections of EHA and 504?

2. Do EHA, Section 504 and their implementing regulations contemplate a dual system of discipline of handicapped and nonhandicapped students?

3. Who is responsible for raising the question of whether the student's misconduct is a manifestation of the student's handicap?

4. Do EHA regulations require that local school officials should have granted requests for due process hearings?

5. Did the pre-trial judge properly enter a preliminary injunction against state defendants?

FINDINGS:

1. Before a handicapped student can be expelled, a trained and knowledgeable group of persons must determine whether the student's misconduct bears a relationship to his handicapping condition.

2. Expulsion is a change in educational placement thereby invoking the procedural protections of EHA and Section 504.

3. Expulsion is a proper disciplinary tool under EHA and Section 504, but a complete cessation of educational services is not.

4. The students who requested due process hearings were entitled to them.

5. The trial judge properly entered the preliminary injunction against the state defendants.

SAMPLE MATERIAL

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CRISIS INTERVENTION

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CRISIS INTERVENTION

Overview

Descriptor:

Crisis Intervention service delivered on behalf of exceptional students in Polk County, Florida.

Problem Area:

It has become apparent over the years of working with exceptional students in Polk County that there needs to be adjustment made in the application of disciplinary measures used in the district in relation to exceptional students and their particular handicapping conditions, in order to protect their right to a free, appropriate public education without unnecessary interruption or denial of service through continuous suspensions or expulsions.

It is additionally recognized that local school administrators need considerable re-education as to appropriate use of alternative solutions in situations requiring some form of disciplinary action.

A third notion that has become apparent is that the school district needs to develop a diagnostic prescriptive approach to analyzing problem situations with exceptional student and in as much as possible proact to those situations in a problem solving way rather than reacting in a blameful and judgemental manner which leads to a punishment system being implemented with regard to exceptional students in disciplinary situations.

The goal of any disciplinary action for exceptional students must be aiding in acquiring socially acceptable behaviors in positive ways, and must be individually tailored to the needs of each exceptional student with the same regard as is recognized as appropriate in the development of every exceptional student's individual educational plan.

To do otherwise is to fail to recognize and meet the needs of an exceptional student as a whole person.

Strategies Employed:

Beginning in the Spring of 1980 Polk County implemented a crisis intervention service available to all exceptional students in danger of disciplinary action. The following premises about crisis-intervention were recognized as vital to

AN EQUAL OPPORTUNITY EMPLOYER

the success or failure of the service:

1. Crisis intervention services must be able to be delivered as requested by local school administrators in a reasonable rapid time frame (24 hour response to situations was set as a standard in Polk County).

2. The crisis-intervener must be able to accurately analyze problems with a systems approach and have a full understanding of program options and due process as well as the authority to commit the district's resources on behalf of exceptional students.

3. The crisis-intervener must be able to work co-operatively with local school administrators and not be viewed as a threat to administrative authority.

4. The crisis-intervener must be able to work effectively with exceptional students and their parents.

5. The crisis-intervener must have knowledge of a full range of workable alternative disciplinary measures that will have a good likelihood of being successful in developing more socially acceptable ways of behaving.

6. The crisis-intervener must be able to function in an advocacy role for exceptional student while maintaining a realistic view of the limitations of a local school district in recommending alternatives to be tried.

The Polk County Crisis Intervention Service takes place on two levels:

1. Direct assistance as requested by local school administrators, and/or parents prior to suspension or expulsion.

2. Continuous monitoring of disciplinary actions (suspensions and/or expulsions) taken in regard to exceptional students district wide thereby enabling a proactive response to developing problems.

During the 1979-80 school year there were an estimated 400 school suspensions of exceptional students in Polk County.

The following is a breakdown of school suspensions to this point (March) in the 1980-81 school year.

TOTAL SCHOOL SUSPENSIONS: 175

Program	E.H.					S.I.D.						E.M.H.				
# Days	1	2	3	5	10	1	2	3	4	5	10	1	2	3	5	10
# Students	1	1	22	8	23	3	7	25	1	8	14	1	1	29	8	23
TOTAL	55					58						62				

TOTAL BUS SUSPENSIONS: 43

Program	E.H.				S.L.D.			Speech/ Language	E.M.H.		
# Days	2	3	5	10	3	5	10	5	3	5	10
# Students	4	8	4	3	3	2	4	1	9	3	2
TOTAL	19				9			1	14		

COURT HEARINGS: 19

Program	E.H.	S.L.D.	E.M.H.
TOTAL	8	5	6

In addition, there have been, to date, 101 requests by local school administrators for direct crisis-intervention service requiring from 2 hours to 2 full days intervention. Follow-up assistance has been requested and delivered.

Staffing Pattern and Procedures:

Crisis-Intervention is delivered in Polk County by one (1) manager who carries responsibility for the program for the emotionally handicapped. All other district staff are utilized in consultative and supportive follow-up services. One full time secretary is also utilized in immediate response to telephone calls regarding crisis situations and in record keeping role for all suspensions and expulsions. Any suspension of an exceptional student is tracked by the Exceptional Student Department as a copy of all suspensions and/or expulsions of ESE students is forwarded directly to the Crisis-Intervention Manager. Files are maintained under each individual student name and are kept by area in the District (East, Southwest, North Central, West). Suspension files are monitored continuously to enable a proactive response to problem areas.

Any suspension or expulsion resulting in an administrative hearing at the Superintendent's level require the participation of the Crisis Intervention Manger whose role is to recommend to district administrative personnel alternative disciplinary measures if appropriate. If an alternative ESE placement is recommended the Crisis Intervention Manager functions as the LEA representative in regard to eligibility, placement, and IEP requirements.

In addition, a log of all requests for Crisis Intervention Service received by telephone is maintained which includes identifying student information and action taken.

ROLE DESCRIPTION

Title: Program Manager for Crisis/Intervention

Minimum Qualifications: Master's Degree with certification and successful teaching experience in one or more Exceptional Student Education fields; certification in supervision.

Job Summary: The Crisis Intervention Manager will have responsibility for advocating on behalf of all exceptional students facing some form of disciplinary action. Manager will be responsible to providing consultation and recommendations for alternative strategies to local school administrators in regard to discipline suspension and/or expulsion of exceptional students district wide. The Crisis Intervention Manager will assure that all due caution is exercised in regard to the exceptional student's due process rights.

Duties and Responsibilities:

1. Will be responsible for recording and monitoring all suspensions and expulsions of exceptional students district wide.

2. Will provide consultation to all local school administrators in recommending alternative disciplinary strategies in regard to exceptional students as requested by local school personnel.

3. Will be in attendance at all administrative hearings at the Superintendent's level for the purpose of recommending alternative disciplinary strategies if appropriate.

4. Will function as the LEA representative in all crisis situations requiring change of ESE program and/or placement.

5. Will be responsible for securing approval of all parents involved and assure that parents are informed of their due process rights.

6. Will function as a liasion between exceptional student program and community agencies in advocating for exceptional students in need of specialized community services in crisis situations.

SAMPLE MATERIAL

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SECONDARY PRINCIPAL'S WORKSHOP MATERIALS

Contact:

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Exceptional Student Education
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SUSPENSION/EXPULSION OF HANDICAPPED CHILDREN DISCUSSION

SECONDARY PRINCIPALS' MEETING

Wednesday, December 17, 1980

The content of this presentation is extracted from recent opinions on a national basis. The issues discussed are not intended to be either exhaustive or final, but are presented as guidelines for you to consider when disciplining identified handicapped students.

Procedural Guidelines:

I. It is necessary that you are sure that the student's Individual Educational Plan (IEP) is completely in order prior to any disciplinary action. Assure that the information is complete and current. If there is some concern as to the status of the IEP, please contact the Exceptional Student Education office.

II. Assure that the acts in question are clearly detailed prior to disciplinary proceedings.

III. If it is questionable whether the suspendable act is related to the handicapping condition, the Exceptional Student Education office will be glad to assist you and possibly consider a change in placement.

IV. The staffing and placement committee shall consider whether a particular disciplinary procedure should be adopted for the student and included in the IEP.

V. After an emergency suspension is imposed on a handicapped student, an immediate meeting of the student's IEP Committee should be held to determine the cause and effect of the suspension with a view toward assessing the effectiveness and appropriateness of the student's placement.

VI. Handicapped students who engage in mishebavior and disciplinary infractions are subject to normal school disciplinary rules and procedures so long as such treatment does not abridge the right to free appropriate public education.

ISSUES ADDRESS IN LITIGATION CONCERNING EXPULSIONS

1. Expulsion violates the equal protection clause of the 14th amendment.

2. Expulsion violates the right to education.

3. Expulsion violates the right to an appropriate education.

4. Expulsion bars the provision of alternative educational placements.

5. Expulsion violates the right to receive a free, appropriate public education in the least restrictive environment.

6. Expulsion violates the right to have a change of placement effected through prescribed procedures.

7. Expulsion violates the right to remain in the current educational placement pending administrative or judicial proceeding.

8. Any manifestation of anti-social behavior can be directly related to the handicapping condition - to wit: the behavior is directly linked to the handicapped student's frustration resulting from an inappropriate placement, thus the expulsion issue is clearly a basis for a due process hearing.

EXPULSION

"Expulsion is either a change in placement or a complete denial of an educational placement, therefore state and federal special education laws and state discipline laws are not independent of each other. Both sets of laws clearly deal with a child's socially unacceptable behavior. Discipline, as it is commonly understood, corrects or punishes such behavior. Special education corrects or prevents it. Since special education and discipline themselves are inextricably interrelated, it is not surprising that the laws concerning them will come into conflict. If there is a conflict between state and federal law, the federal law controls."

"Since under the EHA a child's education program must address behavioral difficulties, inappropriate behavior may well demonstrate that the initial program was not the one most appropriate for the child."

Reprinted from an opinion rendered by the Center for Law and Education, Inc., Cambridge, Massachusetts

Exceptional Student Education
640-A Volusia Avenue
Daytona Beach, Florida 32014

M E M O R A N D U M

TO: Exceptional Student Education Staff

FROM: Frederick W. Miller, Director
Exceptional Student Education

DATE: November 25, 1980

SUBJECT: DEFINITION OF THE WORD "APPROPRIATE"

In an opinion rendered in Rowley v. the Board of Education of the Hendrick Hudson Central School District in the southern district of New York (1980) the following definition was applied to the word "appropriate" as it appears in 94-142. "The appropriate education required to be provided under the Education for all Handicapped Act means that each handicapped child be given the opportunity provided to achieve his full potential commensurate with the opportunity proveded to other children." As the question arises from time to time as to what is the definition of appropriate, this information is provided to you for a reference.

FWM:mjb

cc: Mr. Robert McDermott
Mr. Andrew J. Moore
Dr. Thomas J. Parker
Mrs. Shirley Lee

CASE CONCERNING EXPULSION OF SPECIAL EDUCATION STUDENTS

James Doe v. School Admin. Unit No. 40 for Milford.
Mont Vernon, New Hampshire, No. 80-9-D, (D.N.H. Jan. 1980)

This case concerns a student who could not pass his subjects and was placed in the Regional Special Education Consortium by the school district for purposes of testing and evaluation. The results of the evaluation placed the student in five hours a week of specialized instruction and 25 hours in regular classrooms. The mother consented to the placement. He became a disruptive influence in school and was suspended from school with a hearing. Suit was brought claiming the suspension discriminated against him on the basis of his handicap by excluding him from the free appropriate public education afforded non-handicapped individuals. The court agreed that a prolonged suspension would in fact change his placement for which defendents are charged to provide procedural safeguards as a condition to their acceptance of federal funds. The court was unable to conclude that it was likely that the plaintiff would succeed on his substantive statutory claim that his suspension constituted a discrimination on the basis of handicap. The court could not conclude that the disruptive behavior that prompted the school board's suspension of the plaintiff was caused to any substantial degree by his handicap or by his current placement program. The court said that the,

> suspension of the plaintiff cannot be said to constitute discrimination based on his handicap since plaintiff's suspension-prompting behavior has not been shown to be substantially related to his learning disability or defendents' attempts to remedy such disability. Unequal treatment in this case under equal protection is not sufficiently evident to enable the court to predict success on the merits of this claim.

After consideration of all of the options, the court ended the suspension after ten days and the student was placed back in his current educational placement unless a new placement has been implemented for him. Since that time, the case has been settled and the child has been placed in a new placement and his needs are being met.

Reprinted from NOLPE Notes (National Organization on Legal Problems of Education)
January 1981

CASE LAW CONCERNING DISCIPLINARY EXCLUSION OF THE HANDICAPPED

Mills v. Board of Education of the District of Columbia, 348 F.Supp. 866 (D.D.C. 1972)

Donnie R. v. Wood, Civil No. 77-1360 (D.S.C. - Consent Decree, August 2, 1977)

Stuart v. Nappi, 443 F. Supp. 1235 (D. Conn. 1978)

Howard S. v. Friendswood Independent School District, 454 F. Supp. 634 (D. Tex. 1978)

Tyrone P. v. Maschmeyer, Civil No. 78-934C(2) (E.D. Mo. - Consent Decree - Nov. 24, 1978)

Campochiaro v. Califano, Civil No. H-78-64 (D. Conn. 1978)

Mattie T. v. Holladay, No. DC-75-31-S (N.D. Miss. Consent Decree January 26, 1979)

P-I v. Shedd, Civil No. H78-58 (D. Conn. - Consent Decree March 23, 1979) 551:164 EHLR

K.B. v. Withey, Civil No. 78-288 (D. Vt. - Stipulation, December, 1978)

Southwest Warrent Community School District v. Department of Public Instruction, No. 231/63181 (Iowa Supreme Ct., 1979) 551:378 EHLR

S-I v. Turlington, (S.D. Fla. 1979) EHLR 551:211

Mrs. A. J. v. Special School District No. 1, 478 F. Supp. 418 (D. Minn. 1979)

Doe v. Koger, 480 F. Supp. 225 (N.D. Ind. 1979)

Sherry v. NY State Education Department, 479 F. Supp. 1328 (W.D.N.Y. 1979)

Victoria L. v. District School Board of Lee County (M.D. Fla. 1980) 552:265 EHLR

INFORMATION, PROCEDURES AND POLICIES REGARDING
SUSPENSIONS, EXEMPTIONS, AND EXPULSIONS

School attendance is a student right which has been confirmed in law and in an increasing number of court decisions.

There are basically three procedures under which a student can be asked to remain out of school, under the age of 16. These include suspension, exemption and expulsion.

1. Suspension Definition: Florida Statute 228.041(26) "Suspension is the temporary removal of a student from his regular school program for a period not to exceed 10 school days." Section 232.26 Florida Statute, states in part that the principal may suspend a student, after good faith effort has been made to employ parental and other assistance or other alternative measures, except in case of emergency or disruptive conditions which require immediate suspension. The law specifies that no child who is required by law to attend school shall be suspended for unexcused absences or truancy. The principal or his designated representative may temporarily suspend students transported to or from school at public expense from the privilege of riding on a school bus. Each such suspension with the reasons therefor shall be reported within 24 hours in writing to the parent and to the county Superintendent. No one suspension shall be made a resolution adopted and spread upon its minutes. When a suspended student is absent from school, he cannot be counted in attendance.

A. Suspensions may not be for an indefinite period. When you suspend a student, the notice should state the exact number of days he is suspended and on what date he is due to report back to school. However, you can refuse to let him return to class until a parent talks with school personnel, as long as you do not keep him out of school longer than 10 days. Schools do not have the right to suspend for more than 10 days at a time and may not re-suspend a student, unless the student has violated an additional school regulation on his return. Suspensions of over 10 days and exemption are prerogatives of the Superintendent. Expulsions are the prerogative of the Superintendent and School Board.

B. When suspending a student, written notice of suspension should be sent as follows:

(1) The original copy to the parent or guardian of the student being suspended.

(2) One copy to the Superintendent of Schools.

C. A suspended student should not be told to remove himself from the premises. The parents or guardian should be contacted at once and asked to come for the student. If the parent or guardian cannot be reached, one of the following should be done:

(1) Keep the student under supervision in the office or elsewhere in the school until school is dismissed for the day.

(2) Have the student taken home by school personnel.

(3) If the matter is so serious and urgent that the student absolutely cannot remain at school, call Safety and Security.

(4) The local police department should be called if the incident involves a possible law violation.

D. If there is a situation where a student shows no improvement and is repeatedly having problems, or being suspended, the following should be considered:

(1) Complete review and recommendations by the School's Child Study Team.

(2) Adjusted school program or use of other resources - Alternative Education, TRY Center.

(3) Referral to School Social Worker.

(4) Referral to School Psychologist, if appropriate, for evaluation and/or other services.

2. Exemptions

At present there are three categories of exemptions which may be considered. Each is valid only for the school year in which it is issued.

A. Judicial Exemption - A Circuit Judge can order Judicial Exemptions with the agreement of the Superintendent. These exemptions are few in number and there is no procedure for school system personnel to obtain these.

B. Child Care Exemption - A parent who is within the compulsory attendance age and who does not have access to child care may be exempted from attending school.

Such situations should be referred to the School Social Worker. If, after study, it is determined that no child care arrangements can be made, the School Social Worker submits a report with pertinent information to Head, School Social Services for recommendation to the Superintendent for exemption.

C. Employment Exemption - This exemption is issued only in cases of serious family financial hardship where the student under 16 is needed to help support the family and when such a student has a job which requires him to work during school hours. Such situations should be referred to the School Social Worker serving the school. (S)he will make a study of the situation and help the family complete necessary forms required under Child Labor Laws. These forms include:

(1) Doctor's Statement of the Student's Physical Condition;

(2) Statement of Age;

(3) Parent Consent/Statement of Need; and

(4) Statement of Educational Qualifications (by the school).

The employer completes the Application for Employment Certificate. The School Social Worker completes the green Certificate (AT-20) for employment during school hours. All reports are forwarded to Head, School Social Services for recommendation to the Superintendent for exemption. When Exemption Certificate is issued, copies will be sent to: the school and the parents. School Social Worker will then issue the Certificate (AT-20).

3. Expulsion

Expulsion, that is, removal of a student from school placement in the District, for an extended period of time (usually for the balance of the school year) can be recommended by the Superintendent to the School Board under State Law and Board Policy.

These situations are few, since we have a responsibility to provide appropriate school programs to students. Therefore, our major efforts must be geared toward utilizing or developing programs and services, in regular classes, Special Education programs (if an identified student), Alternative Education or through Student Services support, which will meet students' needs.

We must also be able to carefully and specifically document a student's educational needs and problems and our efforts to solve problems and serve him appropriately. These efforts should include:

(1) Parent notification and conferences;

(2) Full use of the Child Study Team resources;

(3) Student Services; and

(4) Exceptional Student Education resources, where appropriate.

In situations where school personnel have utilized all available resources or when a situation occurs with a student which seriously endangers or threatens to endanger the health and safety of himself or others in the school, the Principal may write a letter to the Superintendent requesting expulsion. Full information should be included regarding educational history, behavioral history, documentation of all attempts made to solve the problems, (class changes, alternative or Exceptional Student Education programs,

referrals to school and community resources, parent involvement, etc.) Also, a full description should be included of any serious incidents of threatened bodily harm (including names of witnesses). The above reporting by the Principal does not, of course, take the place of parental notification and appropriate contact with police at the time of the incident(s).

If the Superintendent feels further study is needed, he will refer such situations to the Head, School Social Services. On receipt of such referrals, Student Services will make a complete review of efforts to plan an appropriate education for the student and will assist in seeking any alternative plans available anywhere in our system, or if none, outside the school system, to meet the students needs.

Full involvement of Exceptional Student Education Staff and resources will be used in this review as needed. Parents, school personnel and other appropriate agencies will be involved. Psychological referrals, if needed on these cases, will be requested by Head, School Social Services and will be treated as "emergency referrals from the Superintendent". Copy of psychological reports and recommendations will be forwarded when complete to Head, School Social Services in addition to the usual routing. Progress and written reports and recommendations by School Psychologist, Principals, School Social Workers and others will be reviewed by the Student Services - Exceptional Student Education Articulation Committee, as

needed, with minutes kept on such situations by Head, School Social Services. This committee will make recommendations to the Superintendent as needed.

Referral to Exceptional Student Education Staffing/Placement Committee may be recommended, if this is appropriate and if potential new resources may be developed there. Referral back to the school, transfer to other public schools or alternative programs or referral to other community resources may be recommended.

If expulsion by the School Board is recommended, all material will be submitted to the Superintendent by the Head, School Social Services with the committee's recommendations and any other recommendations available. School Social Services will assume responsibility for completing the paper work for the Superintendent's consideration and notification to the parents of hearing date, according to Board policy, if expulsion proceedings before the School Board are deemed necessary by the Superintendent.

SAMPLE MATERIAL

This information has been reprinted with the permission of the local school district and is intended for use as resource information. The information does not represent official policy of the Florida Department of Education.

SUSPENSION POLICY

Contact:

Mrs. Faye Clark, Interim Director
Exceptional Student Education
Broward County Public Schools
1005 E. Broward Blvd.
Ft. Lauderdale, Florida 33301
(305) 765-6667

5006.1 SUSPENSIONS AND EXPULSIONS OF HANDICAPPED STUDENTS

SUSPENSION AND/OR EXPULSION OF HANDICAPPED STUDENTS FROM SCHOOL OR THE BUS SHALL BE GOVERNED BY THIS POLICY AND ITS RULES.

A. Non-Emergency Suspension of Handicapped Students

1. A handicapped student may be suspended for 1 - 3 days for minor or major infractions (as defined by the Student Conduct and Discipline Code) if that decision is made by an Eligibility, IEP, and Placement (EIP) Staffing Committee and the Staffing Committee has recorded the specific use of suspension on the student's individualized education program (IEP) prior to the suspension.

2. Implementation of the 1 - 3 day suspension requires that notice of suspension shall be sent, within twenty-four (24) hours, by certified or registered mail or hand-delivered, to the parents/guardian (receipt of the delivery must be obtained) and the Superintendent/designee. If the student is 18 years of age or older, notice must also be sent to the student. The ESE S-1 Form shall be used for this purpose. A copy of the student's IEP, on which this decision was recorded, shall be attached to the ESE S-1 Form.

3. The principal/designee shall notify the Superintendent/designee of all non-emergency suspensions by forwarding a copy of the ESE S-1 Form.

B. Emergency Suspension of Handicapped Students

If in the opinion of the principal/designee, he/she has justifiable reason to believe that an Eligiblility, IEP, and Placement Staffing Committee cannot be convened prior to suspension because of an emergency situation, then he/she may immediately suspend the student for a period not to exceed five (5) days. An emergency situation is one in which the student's presence poses a continuing danger to persons or property or an on-going threat of disrupting the academic process.

1. Within twenty-four (24) hours of the student's suspension, the principal/designee shall provide written notice to the parent and/or guardian and the student of the suspension, alleged charges, and scheduled Eligibility, IEP, and Placement Staffing (specifying the purpose, participants, time, and place). In addition, the parent and/or guardian shall be asked to attend the Eligibility, IEP, and Placement Staffing.

   The ESE S-2 Form shall be used for this purpose.

This notice may be delivered by either of the following methods:

a. registered or certified mail (return receipt requested)

b. personal delivery by the principal, his/her representative, or a visiting teacher (receipt of the delivery must be obtained).

2. Within the five (5) day suspension period, the principal/designee must convene the Elibilility, IEP, and Placement Staffing Committee following all standard procedures as established in the current District Procedures for Providing Special Education for Exceptional Students

The Staffing Committee shall review the student's program and shall determine if the handicapping condition is a precipitating factor of the inappropriate behavior. That decision shall be recorded on the IEP and that information shall be used to revise the student's IEP to reflect 1) the need for the use of suspension as a disciplinary tool or management strategy and/or 2) to modify the educational program and/or 3) to change the educational placement and/or 4) to indicate that the handicapping condition is not a precipitating factor and therefore the student is expected to behave in in accordance with the rules established in the Student Conduct and Discipline Code. Parents must be notified of the Staffing Committee's decision(s) if they have not participated in the staffing.

3. The principal/designee shall notify the Superintendent/designee of all emergency suspensions within twenty-four (24) hours by forwarding a copy of the ESE S-2. After the Eligibility, IEP, and Placement staffing, the principal/designee shall notify the Superintendent/designee of the committee's decisions by forwarding a copy of the ESE S-3 Form.

C. Expulsion of Handicapped Students

Expulsion of handicapped students is defined as removal from one program to another, not exclusion from public education. The District Procedures for Providing Special Education to Exceptional Students describes the procedures to be followed.

D. Suspension

The above procedures apply to internal and external suspension.

Revised
August 24, 1981

PRINCIPAL'S NOTICE TO PARENTS OF ALL NON-EMERGENCY SUSPENSION OF UP TO THREE (3) DAYS

To the Parent or Guardian of:

_____ Date_____
Grade_____
Date of Birth_____
Race_____ Sex_____

Dear Parent or Guardian:

We regret to inform you that in accordance with Board Policy 5006.1 (name)_____ has been suspended for a period of_____days. The reason for the suspension including detailed information of the date and time and the alleged action is as follows:

This action was taken in accordance with the attached Individualized Education Program developed on_____for_____.

Since this is a serious matter and I know that it is our joint concern to help your child to have success in school; it will be helpful for you to call and make an appointment to discuss this matter.

(name)_____will be expected to return to school on (date) _____.

Sincerely yours,

_____

Name_____

Title_____

School_____

attachment

cc: Area Superintendent

ESE S-1

Revised
August 24, 1981

PRINCIPAL'S NOTICE TO PARENTS OF EMERGENCY SUSPENSION UP TO FIVE (5) DAYS

To the Parent or Guardian of:

_____ Date_____
Grade_____
Date of Birth_____
Race_____ Sex_____

Dear Parent or Guardian:

We regret to inform you that on (month)_____(day)_____(year)_____,
(name)_____was suspended from school for violating the
Student Conduct and Discipline Code by allegedly doing the following:

Because of the serious nature of the alleged violation(s) it was impossible to hold an Eligibility, IEP and Placement (EIP) Staffing prior to the suspension.

This letter is to advise you concerning the nature of the allegation(s) and to inform you that an EIP Staffing Meeting concerning the allegation(s) has been set for (time) _____, (date)_____, at (address)_____.
We trust that you will be able to attend this EIP Staffing Meeting with (name)_____, in order that we may work together in his/her best interests. If the above scheduled EIP Staffing Meeting date and/or time is not convenient for you, please contact this office at (phone number)_____ so that it may be rescheduled.

The following school personnel will be present at this EIP Staffing to discuss this situation as it relates to (name)_____ educational program:

Name	Title
_____	_____
_____	_____
_____	_____

Should you fail to appear for the EIP Staffing, you will be provided with a copy of the committee's decisions.

Sincerely yours,

_____

Name_____

Title_____

School_____

cc: Area Superintendent

ESE S-2

Revised
August 24, 1981

PRINCIPAL'S NOTICE TO AREA SUPERINTENDENT OF ELIGIBILITY, IEP AND PLACEMENT COMMITTEES

Dear Area Superintendent:

In accordance with School Board Policy 5006.1, an Eligibility, IEP and Placement Staffing Committee was held on (date)_____for (name)_____.

The Eligibility, IEP and Placement Staffing Committee decided that:

_____ suspension will be used as a disciplinary or behavioral management tool

and/or

_____ suspension will be extended from _____days to _____days

and/or

_____ student will continue his/her present placement

and/or

_____ student will have a change in program placement

The reason for this decision is as follows:

Based upon the outcome of the staffing, it appears that:

_____ the school system will <u>not</u> need to file a request for a due process hearing

_____ the school system will need to file a request for a due process hearing

_____ the parent may file a request for a due process hearing

Attached is a copy of student's current IEP documenting this decision.

_____
Principal and/or designee

Attachment

ESE S-3

State of Florida
Department of Education
Tallahassee, Florida
Ralph D. Turlington, Commissioner
Affirmative action/equal
opportunity employer

This public document was promulgated at an annual cost of $711.78 or $.95 per copy to inform the public on the issue of expulsion and handicapped students.

FLORIDA: A STATE OF EDUCATIONAL DISTINCTION. **"On a statewide average, educational achievement in the State of Florida will equal that of the upper quartile of states within five years, as indicated by commonly accepted criteria of attainment."** **Adopted, State Board of Education, Jan. 20, 1981**